IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 476 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMIBEN MANGAJI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 476 of 2001

MR YF MEHTA for Petitioner No. 1

MR HL JANI, PUBLIC PROSECUTOR for Respondent No. 1

NOTICE SERVED for Respondents No. 2-3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 14/12/2001

ORAL JUDGEMENT

#. Heard the learned advocates.

#. Rule returnable today. Learned APP Mr.HL Jani appears for and waives service on behalf of the State.

#. Feeling aggrieved by the order dated 3rd October, 2001 made by the learned Metropolitan Magistrate, Court No.16, Ahmedabad, the petitioner has preferred the present petition. It appears that the petitioner had lodged a private complaint before the learned Metropolitan Magistrate, Ahmedabad with respect to the offence punishable under Sections 420, 467, 468, 471 and 114 of the Indian Penal Code. The said complaint has been registered as Inquiry Case No.82/2001. Under order dated 27th September, 2001, a police inquiry was directed without referring to the relevant provisions of the statute. The petitioner, therefore, on 1st October, 2001 moved application for clarification. On the said application, the learned Judge has, on 3rd October, 2001, made an order for investigation under Section 202 CrPC. Feeling aggrieved, the petitioner has preferred the present petition.

#. Mr.Mehta has submitted that the learned Magistrate has erred in ordering police investigation under Section 202 CrPC. He has submitted that in order to order police investigation under Section 202 CrPC, the learned Magistrate is first required to record the evidence of the complainant and the witness, if any. In the present case, the learned Magistrate has not recorded the evidence of the complainant. The learned Magistrate, therefore, could not have ordered police investigation under Section 202 CrPC. The learned APP Mr.Jani concedes that the recording of evidence of the complainant and witness, if any, is a pre-requisite for issuing direction under Section 202 CrPC.

#. In the circumstances, the Revision Application is allowed. The impugned order dated 3rd October, 2001 made by the learned Metropolitan Magistrate, Court No.16, Ahmedabad below Application dated 1st October, 2001, directing police investigation under Section 202 CrPC, is quashed and set aside. The order dated 27th September, 2001 made by the learned Magistrate, directing police investigation, is restored. It is clarified that the police shall make investigation in consonance with Section 156(3) CrPC and shall submit its report to the learned Magistrate. Rule is made absolute in the above terms. Direct service is permitted.

14th December, 2001. (Ms. R.M.Doshit, J.)

/sakkaf